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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-1177

ALTON J. BAILEY, LEROY SMITH, and THE GENERAL LONGSHOREWORKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL UNION NO. 1830, PORT ALLEN, LOUISIANA

Petitioners

VERSUS

GEORGE DIXON, THOMAS W. GLEASON, RALPH MASSEY, MARK L. YOUNG, AND THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1971

No._____

Alton J. Bailey, Leroy Smith, and The General Longshoreworkers International Longshoremen's Association, Local Union No. 1830, Port Allen, Louisiana

versus

George Dixon, Thomas W. Gleason, Ralph Massey, Mark L. Young, and The International Longshoremen's Association

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioners, Alton J. Bailey, Leroy Smith, Alvin Montgomery, Charley Lamark, Ernest Davis, Freddie Borris, H. C. Johnson, Earl McQuillion, officers of Local Union 1830 and the General Longshore Workers International Longshoremen's Association, Local Union No. 1830, Port Allen, Louisiana, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on November 18, 1971, as to which a petition for rehearing was denied on December 20, 1971.

CITATION TO OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, denying petitioners' motions for a preliminary and/or permanent injunction and for summary judgment is printed in Appendix E hereto and is reported at 314 F.Supp. 452 (E.D. La., 1970). The opinion of the Court of Appeals for the Fifth Circuit, which affirmed the judgment of the said District Court, is printed in Appendix B hereto and is not yet reported.

JURISDICTION

The judgment of the Court of Appeals, printed in Appendix A hereto, was entered on November 18, 1971, and petitioners' petition for a rehearing was denied on December 20, 1971. The Court of Appeals stayed its mandate for

30 days until February 4th, 1972, and further stayed its mandate for an additional 30 days until March 11th, 1972, pending the filing of a petition for a writ of certiorari and final determination thereon by this court.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

THE QUESTIONS PRESENTED

1. May an International Labor organization, acting under Title III, Section 302, of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 462, legally impose a trusteeship upon a Local labor organization for the sole purpose of invalidating a fair and democratic election of officers within the Local, removing from office the officers elected by a majority of the members of the Local, and reinstating to office under the trusteeship, the corrupt minority faction which had been defeated in the election, thus using the trusteeship device as a means of stifling democratic processes and of attempting to settle an intra-union political dispute between two competing political factions within the Local, when the hearing held by the International union, pursuant to Title III, Section 304(c), of said Act, 29 U.S.C. Sec 464(c), did not produce any evidence or proof that one of the legal grounds for trustee-

ship, under Section 302 of said act, existed?

2. In a civil action brought by a Local Labor organization and duly elected officers thereof to have the Court set aside a trusteeship imposed over such Local by the parent International labor organization, is the United States District Court powerless to review the evidence, or lack thereof, adduced at the International's trial committee hearing and upon which the erroneous conclusion of the International that there existed a legal ground for establishment of a trusteeship was admittedly predicated, in veiw of the requirement in Title III, Section 304(c), of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sec. 464(c), that a fair hearing be had prior to the imposition of trusteeship and that there be proven to exist one of the purposes for which trusteeships may be established, as stated in Title III, Section 302, of said Act?

STATEMENT OF THE CASE

Jurisdiction of the court of first instance, the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, was 28 U.S.C. Sec. 1337, which gives the United States District Courts jurisdiction over "any civil action of proceeding arising under any Act of Congress regulating commerce . . . ."

Petitioners herein are the plaintiffs in the District Court and appellants in the United States Court of Appeals for the Fifth Circuit.

Petitioners are Local Union No. 1830 of the International Longshoremen's Association, Port Allen, Louisiana (hereinafter referred to as Local 1830) and eight members who are duly elected officers of Local 1830, who are: Alton J. Bailey, Leroy Smith, Alvin Montgomery, Charley Lamark, Ernest Davis, Freddie Borris, H. C. Johnson, Earl McQuillion.

Respondents are the following:

(a) The International Longshoremen's Association (hereinafter referred to as the International);

(b) Thomas W. Gleason, president of the International;

(c) George Dixon, an International vice president who was appointed trustee of Local 1830 by the International President on advice of the Executive Committee;

(d) Ralph Massey, president of the South Atlantic and Gulf Coast District of the International;

(e) Mark L. Young, member of Local 1830 and Financial secretary thereof, appointed by the trustee, George Dixon;

(f) Clarence G. Kirby, a member of the International's Local in Brownsville, Texas, and appointed administrator of Local 1830 by the trustee, George Dixon; and

(g) Louis Harden, a member of Local 1830 and appointed assistant administrator thereof by the trustee, George Dixon.

Local 1830 was organized in Port Allen, Louisiana, in 1955, and has remained the all-Negro local of the International in Port Allen. (Local 1833, which is not a party to this suit, is the all-white sister local in Port Allen.) The chief organizer of Local 1830 in 1955 was J. Harvey Netter, who was president of the local from 1955 to February 27, 1969.

Petitioner, Alton J. Bailey, has been a local member since 1959, and in the regular triennial election of officers of the local held in January, 1969, Bailey ran against Netter and a third candidate, Antoine Boudreaux, each of whom received the following votes: Alton J. Bailey, 73 votes, J. Harvey Netter, 73 votes; and Antoine Boudreaux, 22 votes. Prior to the runoff election held in February 1969, Netter told petitioner, Ernest Davis, a Bailey supporter, that if Bailey won the runoff election, Local 1830 would be placed in trusteeship by the International. In the runoff election between Bailey and Netter,

enough of the Boudreaux voters voted for Bailey to enable Bailey to defeat Netter for the office of president of Local 1830.

After the runoff election, Bailey began to meet with resistance from the supporters of his opponent, Netter, which includes respondents herein. For example, the Local 1830 Constitution and By-Laws require that the installation of officers should be held the week following the election. However, the installation of officers was not held until Bailey went to New Orleans to see Alfred Chittenden, an International Vice President, who finally condescended to hold an installation of officers. The installation was held on February 27, 1969.

On March 3, 1969, four days after Bailey's installation as president, Netter supporters, including respondents, Young, and Harden, signed and circulated a petition containing ficticious and invalid charges against Bailey and filed said petition with the International Executive council in New York, requesting that the International oust Bailey and the other officers and impose trusteeship over Local 1830.

Without serving the charges on Bailey and without filing the charges with Local 1830 as required by the Local 1830 Constitution, the International

on April 22, 1969, sent a committee headed by Ralph Massey and including Alfred Chittenden, Clarence Henry, and others to investigate the charges against Bailey. The charges were never served on Bailey, nor was a hearing held. However, the committee made a brief visit to the union hall in Port Allen, and thereafter wrote a letter to the International stating that it was their opinion that Bailey was guilty as charged and that Local 1830 should be placed in trusteeship.

Based upon the Massey committee report, the International on May 30, 1969, sent George Dixon of Mobile, Alabama, to Port Allen to take over Local 1830 as trustee. When Bailey questioned Dixon's authority to oust the duly elected president and all the other duly elected officers from office and evict them from the union hall and take charge of the books, property, and finances of Local 1830, Dixon filed criminal trespass charges against Bailey as a result of which Bailey was arrested and incarcerated in the Port Allen Jail. Thereupon, Dixon returned control of Local 1830 to the defeated Netter group by appointing the former Netter officers to office and by naming Mark L. Young, who was Netter's protege, to the newly created position of "Administrator". Bailey and all of the other officers elected on his ticket were ousted.

On June 4, 1969, petitioners filed the original complaint herein in the U. S. District Court for the Eastern District of Louisiana, Baton Rouge Division, seeking injunctive relief from the imposition of trusteeship over Local 1830 by the International. On June 5, 1969, the District Court signed a temporary restraining order to fix the hearing on a preliminary injunction for June 23, 1969. After the June 23 hearing the preliminary injunction was granted, the court predicated its decision upon the fact that the trusteeship was imposed and petitioners were removed from office without their being accorded the procedural safeguards required by Section 101 (a) (5) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Section 411, particularly, that the trusteeship was imposed without a full and fair hearing on the charges which had been filed against Bailey.

Respondent perfected an appeal to the United States Court of Appeals for the Fifth Circuit from said preliminary injunction and the Fifth Circuit affirmed the decision of the District Court, which decision is reported at 429 F.2d. 1321, 74 LRRM 2712.

Three days later, on June 26, 1969, respondents renewed their efforts to oust Bailey and the other officers elected on his ticket from Local 1830 positions of leadership by filing with

the International Executive Council a second petition signed by fourteen members of Local 1830 containing false charges against Bailey. The said second petition included the original charges contained in the March 3, 1969, petition as well as two additional false charges: (1) Mishandling of union funds, and (2) excluding Mark L. Young from the union hall. A third charge, that Bailey as president had illegally allowed the initiation fee to be reduced from $500.00 to $200.00, was not contained in either the March 3 or the June 26 charges, but rather was introduced at a later trial hearing, all of which will be dealt with herein below.

Bailey was first furnished with a copy of the June 26, 1969, charges by a letter dated July 11, 1969, from Thomas W. Gleason, president of the International to Bailey. Gleason's letter advised Bailey that the Executive Council had appointed a trial committee to conduct a hearing on the charges against him at the Jack Tar Capital House Hotel in Baton Rouge, Louisiana, on July 29, 1969. By stipulation the date of the trial hearing was subsequently changed to August 12, 1969.

Prior to the trial hearing, some 120 members of Local 1830 filed a counter petition with Gleason expressing the confidence of some two-thirds of the Local 1830 membership in Bailey and requesting that Bailey be allowed to

continue in the office of president and that trusteeship not be imposed. No action whatsoever was taken by the International on the petition of the 120 members, although the trial committee hearing to investigate the charges against Bailey was called by the International Executive Committee on the petition dated June 26, 1969, which was signed by only 14 members of Local 1830.

The trial hearing convened at 11:00 a.m. on August 12, 1969. The three-man trial committee was comprised of (a) William Hopkins, chairman, (b) Clarence Henry, (c) Alfred Chittenden. All three said committee members are International vice presidents and are based in the South Atlantic and Gulf Coast district, of which Local 1830 is a part. All three also have been longtime friends, supporters and associates of Netter. Henry and Chittenden as president of Local 1418 and Local 1419 respective in New Orleans, had peculiar first hand knowledge of the controversy because it was to their offices as vice presidents of the International, that Bailey and others had previously addressed numerous complaints against Netter's dictatorial oppression of Local 1830, and both Henry and Chittenden had first-hand knowledge of Bailey's effort to secure his and the other members' rights within Local 1830.

The trial committee hearing lasted 12 hours and the transcript which is filed in the record of this case contains 546 pages. As the transcript shows, the hearing was not full and fair as required by law but rather was of the nature of a "kangaroo court", the trial committee members taking the position of prosecutors of Bailey and defenders of the International and the Netter faction within Local 1830. Furthermore, the evidence contained in the transcript does not support the subsequent action by the International in imposing trusteeship over Local 1830, because the transcript does not contain any evidence to support a valid ground for trusteeship under the Labor-Management Reporting and Disclosure Act of 1959.

After the trial committee hearing, the trial committee prepared a four-page written report to the executive council, a copy of which report is filed in evidence in this case. At the October 1, 1969, meeting of the Executive Council an attorney for the International by the name of Seymour Waldman orally summarized the four-page trial committee report, and based upon Waldman's summary of the report, the Executive Council voted to place Local 1830 in trusteeship and to oust Bailey and the other officers elected on his ticket from office. The record does not reveal what Waldman said to the council. However, the record does show that Bailey was not notified that the executive council would consider the

proposal to impose trusteeship at the October 1 meeting; the proposal was not on the agenda of the October 1 meeting; Bailey was not present at the October 1 meeting; Bailey did not have an opportunity to present his side of the case to the executive council at the October 1 meeting; nor did the Executive Council have before it the complete 546-page transcript of the trial committee hearing.

Nevertheless, Gleason wrote to Bailey by letter dated October 14, 1969, which letter is in evidence, advising Bailey that he had been found guilty of the charges against him and that Dixon had been again appointed trustee of Local 1830. On or about October 22, 1969, Dixon reappeared at Local 1830 and took over as trustee for the second time. As Dixon had done when the first trusteeship was imposed, he again ousted Bailey and all of the officers elected in the February election and appointed to office the former Netter officers or supporters, naming Mark L. Young as financial secretary, Louis Harden as assistant administrator, and Clarence G. Kirby, as administrator. All of the appointees were friends, supporters and associates of Netter over the years, and Young and Harden had served as officers under Netter for several years. It was an acknowledged fact that Young was Netter's protege and heir apparent to the

presidency.

On November 17, 1969, petitioners filed in the U. S. District Court for the Eastern District of Louisiana, Baton Rouge Division, a supplemental and amended complaint alleging that the sole purpose of the International in imposing the second trusteeship was to remove from office Bailey and the other members of his ticket and to restore to power the minority political faction formerly headed by Netter and presently headed by Young. Thereafter, On December 1, 1969, petitioners took the deposition of Thomas W. Gleason, president of the International, and when said deposition revealed that the International did not have a legal ground for imposing trusteeship, petitioners then filed in the District Court a motion for summary judgment, together with an application for a preliminary injunction. The court fixed the motion for hearing on December 17, 1969.

Two days prior to the December 17 hearing, some 136 members (nearly two-thirds of the membership of Local 1830) filed a motion to intervene as plaintiffs in opposition to the International's action in placing Local 1830 in trusteeship.

Respondents did not file an answer to the supplemental and amended complaint nor did they file any affidavit or any other opposition to petitioners' motion for summary judgment, nor did

respondents file any defensive pleadings in this case.

A hearing was held before the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, Honorable Judge E. Gordon West presiding, on December 17, 1969. At the hearing, the district court erroneously denied the motion to intervene which had been filed by 106 members of Local 1830 but authorized said members to file an amicus curiae brief and requested the parties to the suit to file findings of fact and conclusions of law and replies thereto, after which the court would take the case under advisement.

While the case was under advisement, respondents represented to petitioners that respondents agreed that this internal political dispute should be settled by another election of officers by the members, and respondents represented to petitioners that respondents had appointed an International vice president from Miami, Florida, one Perry Harvey, to come to Port Allen, Louisiana, and to conduct another election of officers. However, when respondents failed to carry through with said promise, and when no decision had been rendered in this action by the district court for more than six months after the December 17 hearing, petitioners on June 29, 1970, filed in the district court a motion for an order for

respondents to show cause as to why they should not proceed with their promise to call a special election of officers, and, in the alternative, why the court should not order the International to call a special election or decide the case on the merits.

On June 30, 1970, the district court rendered its findings of fact and conclusions of law, wherein it sustained the validity of the trusteeship imposed over Local 1830 by the International, denied petitioners' motion for summary judgment and dismissed their suit. The district court rendered judgment accordingly on July 9, 1970. The decision of the District Court is reported at 314 F. Supp. 452.

Petitioners filed a motion for new trial in the district court on July 20, 1970, alleging that the district court committed error of law in failing to rule that the trusteeship was invalid and that the trusteeship waw imposed by the International in bad faith and for the sole purpose of ousting from office and from membership in Local 1830 the duly elected president, Alton J. Bailey.

Respondents further showed their bad faith in that on July 13, 1970, two business days after the judgment sustaining the trusteeship was rendered by the district court, the appointed adminsitrator, Kirby, refused to accept Bailey's tender of his quarterly membership dues. Under Article

VI, Section 2 of the Local Constitution, which is in evidence, Bailey, as president during the pendency of this suit, was expressly exempt from the payment of quarterly dues. However, since the trusteeship was ruled valid by the district court, Bailey immediately offered to pay his dues. However, Kirby refused to accept same, advising Bailey that he was no longer considered a member of Local 1830.

On July 22, 1970, two days after petitioners filed their motion for new trial, petitioner Bailey filed a separate civil action in the same district court entitled "Alton J. Bailey v. George Dixon, Thomas W. Gleason, Ralph Massey, Mark L. Young, Clarence G. Kirby, and the International Longshoremen's Association," Civil Action No. 70-150, seeking judgment recognizing him to be a member of Local 1830 and not required to pay an initiation fee of $500.00 for membership in Local 1830 and requesting that the court enjoin respondents from denying Bailey all the rights and privileges of a member of Local 1830. The district court signed a temporary restraining order on July 23, 1970, pursuant to which Bailey was able to pay his dues and obtain his membership button from the administrator, Kirby.

The district court fixed the hearing on the motion for new trial for August 7, 1970. However, respondents did not appear at the hearing. Instead,

respondents filed an affidavit of Julius Miller, counsel for the International herein, wherein the International admitted that Kirby had wrongfully refused to accept Bailey's dues, admitting that Bailey was justified in not paying dues during the pendency of the litigation contesting the validity of the trusteeship, admitting that Bailey would be recognized as a member in good standing without paying the $500.00 initiation fee and suggesting that the questions are now moot and that the suit should therefore be dismissed.

The district court, in Chambers, ruled that based upon the affidavit of Miller in Civil Action No. 70-150, the said suit should be and was dismissed as moot. The court, in spite of the new evidence of bad faith on the part of respondents, denied petitioners' motion for new trial in this suit, civil action 69-109.

Thereafter, on August 7, 1970, petitioners perfected an appeal to the United States Court of Appeals for the Fifth Circuit, and in due course briefs were filed and the case was fixed for oral argument before the Fifth Circuit in Houston, Texas, on April 6, 1971.

The Fifth Circuit decided the case on November 18, 1971, wherein the court, in an opinion written by Circuit Judge O'Sullivan, Senior circuit judge of the Sixth Circuit, Detroit, Michigan,

sitting by designation, affirmed the decision of the District Court. The decision of the Fifth Circuit is reported at _____F. 2d_____, a copy of which is appended hereto as Appendix B.

The Fifth Circuit quoted from the opinion of the District court and adopted the District Court's erroneous conclusion that the International was in good faith in imposing the trusteeship over Local 1830. The Fifth Circuit also adopted the District Court's erroneous conclusion that there was substantial evidence upon which the International's trial committee based its recommendation that trusteeship be imposed, and the Fifth Circuit adopted and approved the erroneous principle of law as stated by the District Court that if the conclusion of the trial committee was based upon substantial evidence, the District Court does not have the right to set their finding aside, although neither the District Court nor the Court of Appeals recited a single evidentiary fact upon which the trial committee's conclusion might have been based.

Petitioner's timely Petition for Rehearing in the Court of Appeals was denied on December 20, 1971, without an opinion.

REASONS FOR GRANTING THE WRIT

I. In holding that trusteeship may be

imposed by an International union, such as the ILA herein, for the sole purpose of invalidating a fair and democratic election of officers in one of its constituent locals, such as Local 1830 herein, and reinstating to office the minority faction which had been defeated in the election, thus allowing the International to use the trusteeship device as a means of stifling democratic processes and of attempting to settle an intra-union political dispute between two competing political factions within Local 1830, the United States Court of Appeals for the Fifth Circuit rendered a decision which is in conflict with a decision of the United States Court of Appeals for the Second Circuit in the case of Schonfeld v. Raftery, 271 F. Supp. 128, affirmed 381 F.2d 446 (1967), and is in conflict with the decision of the United States Court of Appeals for the Tenth Circuit in the case of United Brotherhood of Carpenters and Joiners of America v. Brown, 343 F.2d 872 (1965).

II. Certiorari should be granted to review the decision of the Fifth Circuit herein which affirms the decision of the District Court and holds that in actions brought under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sec. 401, et seq., to set aside a trustee ship which was imposed by the International Union after a hearing conducted by a panel of three International vice presidents, the United States District Courts are powerless to review the evidence adduced at the

trial committee and are powerless to substitute the courts' judgment for that of the trial committee, which decision, because of its far reaching implications, in effect invalidates the said Act and enables International unions, such as the ILA herein, to arbitrarily impose truateeship at the whim and caprice of the International officials and in instances such as the instant case where there is no evidence of any wrongdoing on the part of the Local union officials and no evidence of any legal ground for trusteeship under the Act.

III. Certiorari should be granted herein under the Supreme Court's power of supervision so that Your Honors can correct the Fifth Circuit's sanctioning of a departure by the District Court from the accepted and usual course of judicial proceedings in holding that the International unions across the country are free to impose trusteeships over their constituent locals at will, provided a hearing is held, regardless of the nature of the evidence, or lack of evidence, adduced at the hearing, thus holding that it is the procedure which controls rather than the substance, thus denying to the rank and file members their fundamental and constitutional rights to due process of law.

ARGUMENT ON REASONS FOR GRANTING THE WRIT

I. In holding that tursteeship may be imposed by an International union, such as the ILA herein, for the sole purpose of invalidating a fair and democratic election of officers in one of its constituent locals, such as Local 1830 herein, and reinstating to office the minority faction which had been defeated in the election, thus allowing the International to use the trusteeship device as a means of stifling democratic processes and of attempting to settle in intra-union political dispute between two competing political factions within Local 1830, the United States Court of Appeals for the Fifth Circuit rendered a decision which is in conflict with a decision of the United States Court of Appeals for the Second Circuit in the case of Schonfeld v. Raftery, 271 F.Supp. 128, affirmed, 381 F.2d 446 (1967), and is in conflict with the decision of the United States Court of Appeals for the Tenth Circuit in the case of United Brotherhood of Carpenters and Joiners of American v. Brown, 343 F.2d 872 (1965).

It has been the contention of petitioners throughout these proceedings that the International's sole purpose in placing Local 1830 in trusteeship was to remove Bailey and the other officers elected on his ticket from office and to reinstate in office the corrupt officers who were defeated. Petitioners submit that the Second Circuit and the Tenth Circuit properly refused to allow the

International union so much unbridled power in the Schonfeld and Brown cases respectively, and that the Fifth Circuit's decision in the instant case is in conflict therewith and would allow the International union officials, not only officials of the I.L.A. in the instant case, but also the officials of all the big and powerful unions in the country, to use the expediency of the trusteeship device to oust elected Local officers, place the Local in trusteeship, and return control of the Local to the officers defeated in a democratic election at the whim and caprice of international union officials. Petitioners contend that to allow national and international union officials such power as the Fifth Circuit has done in this case is undesirable as a matter of public policy and runs contra to the express intent of the Congress in enacting the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, et seq. Therefore, petitioners show Your Honors that the far reaching implications of the Fifth Circuit's tolerance of the use of such indiscriminate power by international labor officials, who impose tursteeships under the guise of abiding by the Labor-Management Reporting and Disclosure Act, present issues of such national significance that Your Honors should grant a writ of certiorari in this case in the interest of settling such important national questions once and for all, in the best interests of the labor movement in this country, and in the best interests of interstate commerce.

Petitioners cite the Second Circuit case of Schonfeld v. Raftery, supra, because of the analagous factual situations in that and in the instant case. In Schonfeld, district council members successfully sought to have the court set aside a trusteeship which had been imposed by the respondent international, the Brotherhood of Painters, Decorators and Paperhangers, for the sole purpose of keeping the entrenched officers in power, rather than for one of the lawful causes for trusteeships found in Title III, sec. 302, of the LMRDA, 29 U.S.C. 462. The District Court in that case, in a lengthy opinion which was affirmed by the Second Circuit, lay great stress on the fact that it was only when the incumbent secretary-treasurer, one Rarback, was indicted for criminal conduct, which the Brotherhood had tacitly condoned for several years, that the Brotherhood, the next day, imposed tursteeship in order to keep the Rarback group in power. The trustee reinstated to office all of the corrupt Rarback group, including Rarback, who was appointed to a newly created position of "Coordinator of Education and Coordination." The Second Circuit, in affirming the district court's judgment invalidating the trusteeship, stated, "The record and opinion below make clear that the finding of bad faith was not only not 'clearly erroneous' but was amply justified . . . and we affirm on that analysis." 381 F.2d 446, 447. The District Court had made the following statement: ". . .The proof is clear and convincing that the Brotherhood has not

proceeded in good faith, for any one of the purposes authorized by law, either in establishing or maintaining the trusteeship. . . .The primary reason for establishing the tursteeship was to maintain the status quo in the council as nearly as possible and to thwart the efforts of Rarback's opponents to achieve power by democratic means. . . ." 271 F.Supp. 128, 143-144.

The District Court also made the following statement:

> "The evils to which these lawful purposes relate were the subjects of constant complaint to the Brotherhood during the several years before the trustee was named. The complaints were almost uniformly futile. The Brotherhood knew of, and tacitly condoned, Rarback's arbitrary methods, his effective quelling of protest, his dictatorial control of the council's news publication, and the widespread indications of possible corruption. Nothing was done until Rarback was indicted.
>
> "Then, overnight, the trustee was named." 271 F.Supp. 128, 147.

Petitioners herein submit that the facts established by the record in this case show that an analagous situation existed in Local 1830 for several years prior to the imposition of tursteeship by

the International ln 1969 and that, as in Schonfeld, it was only the election of Bailey as president which triggered the trusteeship "overnight".

The record shows that the three charges against Bailey were not only false but related to conduct on the part of one of the International's supporters and a Bailey opponent, one Mark L. Young, who by reason of his antagonistic attitude toward Bailey and because of his refusal to cooperate with Bailey prior to the imposition of the trusteeship when Bailey was president and Young was financial secretary, put Bailey in a situation in which he could not keep the Local operating and meeting its current obligations. Nevertheless, the International charged Bailey, not Young, with 1) mishandling of union funds, 2) excluding Young from the Local 1830 union hall, and 3) illegally reducing the Local 1830 initiation fee from $500.00 to $200.00.

As to the first charge, mishandling of union funds, the evidence shows without contradiction that immediately after Bailey took office as president, Young who had supported Netter, refused to cooperate with Bailey in any way. Under the Local 1830 Constitution and By-laws, Young, as financial secretary, was required to co-sign as co-drawer all checks drawn on the Local 1830 bank checking account. Young refused to sign any checks, acting under orders not to

do so from International officials; and Bailey could not then draw checks to pay current expenses of the Local. To remedy this emergency situation, the membership at a regular Monday night meeting passed a resolution which is in evidence, authorizing Bailey to open a second bank account in the name of Local 1830 and authorizing Bailey to act alone in drawing checks thereon. Bailey opened the second account, and he drew only two checks thereon, which were checks to pay legitimate bills of the Local. Therefore, Bailey was not guilty of any wrongdoing. It was Young and his supporters among the International officials who were guilty of the illegal conduct, but it was Bailey who was charged. The evidence in the case proves that Bailey exonerated himself of the charge, and it was so recognized by the District Court, which stated in open court:

> "... The evidence so far shows that one Mr. Mark Young could probably have been held in contempt of this Court for violating my temporary restraining order, if I understand the testimony right: that is that he refused to sign checks to allow the business of this union to be carried on after I signed this order on June 5. He could have been held

> in contempt of court. Let this be fair warning to him and to anyone else that they will be, if bills of that union had to be paid, my restraining order prohibited Mr. Mark Young or the other named persons and all others acting in concert with them from in any way interfering with the operation of that union by the elected officials of that union."

As to the second charge against Bailey, excluding Young from the Local 1830 union hall, the record is likewise free of any evidence of wrongdoing on Bailey's part. The evidence shows that Bailey, as president prior to the trusteeship, carried on the affairs of Local 1830 in strict compliance with the Constitution and By-Laws of the Local as well as in accordance with established customs and procedures of Local 1830. The record shows that Local 1830 received funds from various sources, including dues check-off checks from employers, quarterly membership dues from the members, and initiation fees from new members. These funds are deposited in the Local 1830 safe in the union hall, and the president is responsible for the welfare of said funds. Under Article VIII of the Constitution and By-Laws, Young, as financial secretary, was responsible only for those funds which he received from the

president, Bailey, and for which he issued his written receipt. However, since Young refused to come to the union hall and to issue his receipt for funds in the safe and deposit same in the Local's Bank Account, Bailey had good cause for refusing to give Young the combination to the safe and a key to the union hall. The evidence shows that since Local 1830 was organized in 1955, the financial secretary has never had free access to the safe and hall and Bailey testified that he entertained a good faith distrust for Young, as his political opponent, and that therefore he, Bailey, acting pursuant to Article VIII of the Constitution and By-Laws and the established custom of Local 1830, refused to change the rule and allow Young to have the safe combination and a key to the union hall. The evidence shows that the procedure under Bailey was not different from the customary practice in the Local, and it is significant that respondents never complained of the practice until after Bailey was elected president by a majority of the members.

As to the timing of the International's sudden complaint about the financial secretary not having the safe combination and building key immediately after Bailey was elected president, the District Court commented:

"And during all that time he abided by whatever rules and regulations Netter set down and then suddenly when Bailey became president, he decided that all these rules and regulations were violations of the charter, is that right?

"MR. COLE: (counsel for Young)

"I'm not prepared to say that that is correct, no.

"THE COURT"

"If that were correct, would it indicate, in your opinion Mr. Cole, a sort of collusion between these people and the International on this trusteeship?"

As to Young not having a key to the building, the evidence shows that even though Young did not have a right to same by the longstanding custom of the Local, Bailey, in a spirit of cooperation, did give Young a key, but Young thereafter abused the privilege by allowing the illegally appointed trustee, Dixon, to gain access to the hall, drill the safe open and remove all the books and financial records of the Local, which records and books have been secreted by respondents and not available for inspection by other members of the union or of Local 1830.

As to the third charge, that Bailey illegally lowered the Local 1830 initiation fee for new members from $500.00 to $200.00, the evidence likewise clearly absolves Bailey of any guilt. The record shows that said charge was not contained in either the March 3, 1969 or the June 26, 1969 charges against Bailey but that at the hearing held by the International's three-man trial committee in Baton Rouge, Louisiana, on August 12, 1969, respondents orally charged Bailey with the said charge.

The record shows that in 1962, while Netter was president of Local 1830, the initiation fee for new members was raised from $200 to $500 without prior notice to the members as required by the Local 1830 Consittution and By-Laws. Between 1962 and June 16, 1969, several members of Local 1830 made complaints to the International of the illegal increase, but the International refused to take any action, and the initiation fee remained at $500 from 1962 to June 16, 1969. On the latter date, Bailey, as president and during a regular meeting of the Local, entertained a motion from the floor that the fee be reduced from its illegal figure of $500 to $200. The motion was duly seconded, discussed, and put to a vote. The members present voted to reduce the initiation fee to $200.

The record also establishes

that the initiation fee of Local 1833, the all-white sister local of Local 1830 in Port Allen, has been and is $200, and petitioners contend that the $500 fee of the all-Negro local 1830 had a discriminatory effect on prospective members and had the effect of keeping the membership of Local 1830 from growing, thus assuring to the white longshoremen in the Port Allen area a greater share of the available work. Non-member black longshoremen could not join Local 1833 because its membership is limited to whites, while many of them could not join Local 1830 because of the exhorbitant initiation fee. Therefore, Bailey's leadership in using legal means of lowering the fee back to its legal figure of $200 was a desirable step on the part of Local 1830 members and should not have caused any concern to the International. Nevertheless, the International and the other respondents herein contended at the trial committee hearing and before the District Court that the action of Bailey, in entertaining a motion properly made under acceptable rules of parliamentary procedure was objectionable and wrongful. Also, the respondents contend that such conduct on Bailey's part constitutes a ground for trusteeship.

Therefore, since the evidence before the District Court and the Court of Appeals establishes by clear and convincing proof that the three charges against Bailey were false and Bailey was

not guilty of any wrongdoing which would justify the imposition of a trusteeship over Local 1830 by respondent International, the conclusion is inescapable that the respondents were acting in bad faith and that the only motive of the respondents in imposing the trusteeship was an attempt to oust Bailey and regain control of Local 1830 through the defeated Netter and Young regime. In allowing the trusteeship device to be so used, the Fifth Circuit had rendered a decision in conflict with the decision of the Second Circuit in the Schonfeld case, supra, and the Tenth Circuit in the Brown case, supra.

In the Brown case, at 343 F. 2d at page 892, the Tenth Circuit noted the limitations which the Congress imposed upon International Labor Organizations in the imposition of trusteeships over subordinate local unions. The court states the lawful purposes for which trusteeships may be established as stated in Title III, Sec. 302 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. sec. 462, as follows:

> "A second limitation upon the imposition of trusteeships is that under section 302 it must be for one of the following purposes: (1) to correct corruption or financial malpractice; (2) to assure the performance of collective bargaining agree-

ments or other duties of a bargaining representative, or (3) to restore democratic procedures or otherwise carry out the legitimate objects of the labor organization."

The Court then states the Congressional intent behind the trusteeship provisions of the LMRDA:

"Congress recognized that the use of trusteeships by an international union is a particularly effective device for the maintenance of order within the organization and that '*** they have been widely used to prevent corruption, mismanagement of union funds, violation of collective bargaining agreements, infiltration of communists; in short, to preserve the integrity and stability of the organization itself ***.' But, Congress also recognized that '*** in some instances trusteeships have been used as a means of consolidating the power of corrupt union officers, plundering and dissipation the resources of local unions, and preventing the growth of competing political elements within the organization.' 2 U.S. Code Cong. & Adm. News, 86th Congress, 1st Sess., 1959, p. 2333. To preserve

> the legitimate use of trusteeships, Congress in enacting section 302 enumerated the purposes for which a trusteeship could be imposed in language of a broad and general nature. However, in order to prevent their misuse, Congress obviously intended these purposes to have limitations as well and therefore in determining whether a particular case meets the test, the statute must be construed in the light of the various other provisions of the Act.
>
> "The purpose of the Act as a whole is not only to stop and prevent outrageous conduct by thugs and gangsters but also to stop lesser forms of objectionable conduct by those in positions of trust and to protect democratic processes within union organizations. 29 U.S.C. 401; Nelson v. Johnson, 212 F. Supp. 233 (D. Minn. 1962), aff'd, 8 Cir., 325 F.2d 646; Gartner v. Soloner, 220 F. Supp. 115 (E.D.Pa. 1963)."

The Court then recites the Bill of Rights which Congress incorporated into the Act for the protection of the rights of individual members of labor

unions, and then stated:

> "Thus, the rights of individual members of a labor union are protected by federal statute with a view to allowing those members to conduct local matters with a minimum of outside interference. In short local affairs are to be governed by Local members under democratic processes." 343 F. 2d at 893.

The decision of the Fifth Circuit in the instant case is clearly in direct conflict with the above quoted language from the Brown case, decided by the Tenth Circuit.

The Tenth Circuit properly recognizes that the enumeration of grounds for which trusteeships may be imposed under section 302 of the Act is to be narrowly construed, and that each case is to be decided upon its particular facts as to whether one of the ground for trusteeship exists.

The Fifth Circuit in the case at bar has deviated from the rule of the Tenth Circuit in that the Fifth Circuit has sustained the validity of a trusteeship in a case where one of the lawful grounds for trusteeship under section 302 of the Act does not exist.

The only ground for trusteeship established by the evidence in this case is the intra-union political dispute which arose in Local 1830 when Alton J. Bailey, one of your petitioners dared to challenge the corrupt Netter regime and was supported by a majority of the members who elected him president of the Local in 1969. The respondents openly admitted their dislike of Bailey and his challenge of the corrupt status quo, and therefore used the expediency of the trusteeship device as a "front" to enable them to oust Bailey from the presidency and his supporters from their respective offices and then return control of the local to the Mark L. Young faction through the appointed trustee, George Dixon, and his appointed administrator, Kirby. As the court recognized in the Schonfeld case, plaintiffs had the burden of proving the invalidity of the trusteeship, and they sustained that burden. But the Schonfeld court also recognized the Congress intended that the international must come forward with proof of the grounds upon which trusteeship was imposed and proof of its good faith, especially in view of the damaging picture developed by petitioners. But respondents have failed to do so. Instead, respondents have done in this case what the international did in the Schonfeld case and which the Second Circuit held was illegal and therefore was set aside. In doing so, respondents have violated the narrow construction of Section 302 of the Act as stated by the Tenth Circuit in the Brown case.

Moreover, the Second Circuit in the case of Vars v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, 320 F.2d 576, 578 (2d Cir., 1963), held:

> "Both parties agree that in an action of this kind, judicial review of the findings of the Union tribunal is limited in nature. The courts are not free to substitute their judgment for that of the trial court or to re-examine the evidence to determine whether it would have arrived at the same conclusion that was reached by the trial body.*** However, implicit in the requirement of a full and fair hearing is the requirement that there be some evidence to support the charges made. * * * If Section 101 (5) (of the Act) is to provide any measure of protection for the individual union member who finds himself beseiged by the full power of the International Union, some review is necessary in order to protect such members from obvious abuses. This is especially true in cases such as this where the hearing examiner is not an independent figure divorced from union controversies but is an officer

> of the International Union. Thus, although the courts may be without power to review matters of credibility or of strict weight of the evidence, a close reading of the record is justified to insure that the findings are not without any foundation in the evidence."

While the Vars case did not arise under the trusteeship provisions of the Act, but rather was a suit brought by a union member for restoration to membership, both that case and the instant case involve basic rights of rank and file union members vis-a-vis the power of international unions. Therefore, the Second Circuit's reasoning with reference to the power of the courts upon judicial review of a union tribunal's findings and conclusions should apply in a trusteeship case. As the record shows the three-man trial committee herein was composed of three ILA international vice presidents who had openly opposed Bailey's candidacy for office and openly supported the International's candidates, including respondents herein. Therefore, as in the Vars case, the District Court was under a duty to read closely the transcript of the trial committee hearing to determine if the conclusion that trusteeship should be imposed was supported by any evidence. The District

Court, with the approval of the Fifth Circuit, did not read closely the trial committee transcript and did not find or state a single fact in evidence to support a legal trusteeship. Instead, both courts stated the mere conclusion that there was substantial evidence, when in fact there was no evidence of a legal ground for trusteeship. Therefore, the Fifth Circuit has gone contra to the Second and Tenth Circuits, and in so doing, has at best left the labor union trusteeship law vague, contradictory and uncertain, and at worst has opened the way for labor union bosses across the country to use the trusteeship device at their whim and caprice to maintain control of a local through their hand-picked puppets. For example, if the next triennial election of officers in Local 1830, Bailey runs again and is elected, the ILA, under the Fifth Circuit's decision in this case, will be free again to conduct a sham hearing and regardless of the lack of evidence of any fault on Bailey's part, again oust Bailey and all the other officers elected on his ticket, and regain control of the union through the trusteeship device. The undesirability of such a result as the Fifth Circuit decision allows goes without saying.

II. Certiorari should be granted to review the decision of the Fifth Circuit herein which affirms the decision of the District Court and holds that in actions brought under the Labor-Management Reporting

and Disclosure Act of 1959, 29 U.S.C. Sec. 401, et seq., to set aside a trusteeship which was imposed by the International union after a hearing conducted by a panel of three International vice presidents, the United States District Courts are powerless to review the evidence adduced at the trial committee and are powerless to substitute the courts judgment for that of the trial committee, which decision, because of its far reaching implications, in effect invalidates the said Act and enables International unions, such as the ILA herein, to arbitrarily impose trusteeship at the whim and caprice of the International officials and in instances such as the instant case where there is no evidence of any wrongdoing on the part of the Local union officials and no evidence of any legal ground for trusteeship under the Act.

The Supreme Court of the United States has not decided a case dealing with the Labor-Management Reporting and Disclosure Act of 1959, but this case presents issues of such national importance as to the power of International unions vis-a-vis the rights of the individual Local union members and the consequent impact on labor relations in this country that Your Honors should grant certiorari herein and settle these important issues.

Petitioners submit that the crucial error committed by the Fifth Circuit was its decision affirming the District Court and holding that the findings of fact of the three-man trial committee composed of three International vice presidents and who were appointed by the International to hear the charges against Bailey are binding on the Courts and not subject to judicial review because of the fact that the Courts are powerless to substitute their judgment for that of the trial committee.

In the foregoing statement of facts it is stated that Bailey was installed as president of Local 1830 on February 27, 1969, and that on March 3, 1969, respondents circulated a petition of charges against him and filed same with the International, as a result of which and without a hearing the International imposed trusteeship over Local 1830 on or about May 30, 1969.

Petitioners thereupon brought this suit to set aside the trusteeship, and the District Court granted a preliminary injunction in favor of petitioners enjoining the continued operation of the trusteeship on the ground that the International had not conducted a hearing on the charges against Bailey. The District Court cited as authority Title III, Section 304 (c), of the Act, 29 U.S.C. 464(c), and the case of Local No. 2, International Brotherhood

of Telephone Workers v. International Brotherhood of Telephone Workers, 261 F.Supp. 433 (D.C. Mass., 1966).

Respondents appealed to the Fifth Circuit arguing that they had the right to impose trusteeship without a hearing, but Fifth Court properly affirmed the District Court's decision that a hearing is required before trusteeship can be imposed. That case is reported at 429 F.2d 1321 and attached hereto as appendix "I".

Thereafter, on June 26, 1969, respondents renewed their attempts to regain control of Local 1830 through the trusteeship device by initiating a new petition containing the original and new and different charges against Bailey. Respondents, in a pretended effort to comply with the District Court's earlier "full and fair hearing", requirement, this time fixed the charges for hearing before a trial committee of three International vice presidents on July 29, 1969 in Baton Rouge, Louisiana. By consent, the date was changed to August 12, 1969.

As previously stated hereinabove the hearing lasted 12 hours and transcript includes 546 pages of testimony. The entire trial committee transcript was offered and received in evidence before the District Court, was part of the record on appeal to the Fifth Circuit and has been included in the entire

record which has been certified by the Clerk of the Fifth Circuit and filed with Your Honors for consideration along with this petition for certiorari, and which is made apart hereof by reference. As the trial committee hearing transcript reveals, the respondents took the position of prejudging Bailey as guilty, and the whole tenor of the hearing shows that the trial committee of long-standing political opponents of Bailey and who had insisted upon the right to impose trusteeship without a hearing had been instructed by respondents to hold a "hearing" and regardless of the nature of the evidence adduced therein to adjudge Bailey guilty as charged and recommend to the Executive Counsel of the International that Local 1830 be placed in trusteeship and Bailey ousted from office, along with the other officers elected on his ticket.

Petitioners especially urge Your Honors, in considering the merits of this petition for certiorari, to read the 546-page transcript. Even a cursory scanning of the transcript removes any doubt as to Bailey's innocence and shows the bad faith and preconceived intent and motive of respondents in purporting to hold a hearing on the charges. The hearing examiners were biased and prejudiced against Bailey and assumed the roles of prosecutors of Bailey. They continuously harassed and ridiculed him. However, and more importantly, the entire transcript fails to establish a single fact which shows any wrongdoing on Bailey's part. There is no evidence contained therein which would

support a conclusion that one of the grounds for trusteeship under Title III, Section 302 of the Act, existed within Local 1830.

Nevertheless, the trial committee recommended to the International's Executive Council that trusteeship be imposed, and on October 1, 1969, the International again placed Local 1830 in trusteeship, again appointing Dixon as trustee, who again appointed Kirby as administrator and Louis Harden as assistant administrator. The Local, under the trusteeship, was returned to the control of the corrupt officers who had been voted out of office by the members in the February, 1969 runoff election.

Petitioners then filed their Supplemental and Amended Complaint in the District Court, alleging the facts recited hereinabove, and praying for injunctive relief from the trusteeship. The District Court held a hearing on December 17, 1969, and rendered its decision on June 30, 1970, more than six months later.

The District Court filed on June 30, 1970, its written opinion, which is printed in Appendix "E". The District Court therein made the following statement:

"* * *While this Court might not agree with all of the conclusions reached by the Trial Committee, and while it may or may not have reached the same conclusions as did the Executive Committee, a review of the lengthy transcript of the hearings held by the Trial Committee indicates to this court that the trusteeship imposed by the ILA was imposed in good faith and in accordance with the requirements of the constitution of the International Longshoremen's Association and the Labor-Management Reporting and Disclosure Act, and therefore presumed to be a valid trusteeship for a periof of eighteen months. 29 USCA Sec. 464(c). The plaintiffs have failed, in the opinion of this Court to meet the burden of demonstrating by pure and convincing proof that the trusteeship was not established in good faith, and therefore it must be presumed to be a valid trusteeship for a period of eighteen months. * * *"

The District Court then made the following crucial statement:

> "*** It is not the function of this Court to substitute its judgment for that of the Trial Committee. As long as there is substantial evidence upon which to base the judgment of the Trial Committee, this Court does not have the right to set their finding aside. This Court does find, as a fact, that there is substantial testimony upon which to base the Trial Committee's conclusion that a trusteeship should be imposed upon Local 1830, and for this reason, the trusteeship should not be disturbed (sic) by this Court for a period of eighteen months following its inception."

Nowhere, however, in the District Court's opinion does the Court recite a single fact which supports the conclusions reached by the Trial Committee or which supports the conclusion reached by the District Court. The District Court's opinion, therefore, does not comply with the requirements of the Federal Rules of Civil Procedure that it state separately the findings of fact and conclusions of law. Rule 52 provides, in pertinent part:

> "(a) Effect. In all actions tried upon the facts without a jury or with an advisory

> jury, the court shall find the facts specially and shall state separately, its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review.* * *"

The instant case was one wherein your petitioners, as plaintiffs in the District Court, sought a preliminary and in due course a permanent injunction. Your Honors have held:

> "It is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction that there should be fair compliance with Rule 52(a) of the Rules of Civil Procedure." Mayo v. Lakeland Highlands Canning Co., 309 U.S. 310, 316; 60 S.Ct. 517, 84 L.Ed. 774 (1940).

In the cited Mayo case, the Court disposed of the case by stating:

> "We reverse the decree and remand the cause to the court below with instructions that, if the motion for interlocutory injunction is pressed, the parties, if they desire it, may be afforded a further hearing, and any action taken by the court shall by upon findings of fact and conclusions founded upon the evidence, in accordance with Rule 52(a) of the Rules of Civil Procedure."

The Courts of Appeals likewise have held the District Courts to strict compliance with Rule 52(a) in actions seeking injunctive relief, as follows:

Interstate Commerce Commission v. Cardinale Trucking Corp., 308 F.2d 435 (3rd Cir., 1962): The District Court's statement, "under the facts and circumstances of this case the plaintiff is not entitled to a preliminary injunction," was held insufficient.

Bateman v. Ford Motor Co., 310 F.2d 805 (3rd Cir., 1962): The District Court's language in its opinion that the Court finds as a fact that plaintiffs have failed to prove bad faith, coercion, discrimination, or threatened irreparable harm warranting

the issuance of a preliminary injunction under the law "was held insufficient as being merely an ultimate finding.

In the Cardinale Trucking Corp. case, supra, the Third Circuit admonished the District Courts as follows:

> ". . . it now becomes our duty to state that, in the future, unless the court below makes, either in separate, numbered paragraphs or in its opinion, in conformity with Rule 52(a), clear and concise statements of the ultimate facts of the case, so that both the appellant and this court are fully apprised of the basis of its judgment, the matter will be forthwith remanded in order that such findings be made."

The cases bear out the intent of the Federal Rules Committee. As stated in Volume 5A of Moore's Federal Practice, par 52.01 (6), "Findings of fact aid in the process of judgment and in defining for future cases the precise limitations of the issues and the determination thereon."

The opinion of the District Court, as affirmed by the Fifth Circuit in the instant case, goes contra to Rule 52(a) and the mandate of the Supreme Court of the United States in the cited case of Mayo v. Lakeland Highlands Canning Co., supra, in that the Fifth Circuit has condoned the impropriety of the District

Court's deciding the case without complying with Rule 52(a)'s mandatory language "shall" and rather glossing over the facts in evidence by stating in its opinion dated June 30, 1969, merely "ultimate findings" which the Court of Appeals for the 3rd Circuit in the cited case of Bateman v. Ford Motor Company, supra, held to be insufficient.

In the instant case petitioners urged in their brief filed in the Fifth Circuit and in oral argument, that the District Court did not find or state a single fact which would justify a trusteeship under Section 302 of the Labor-Management Reporting and Disclosure Act, 29 USC 462, and that if the District Court had examined the evidence and if it had then attempted to comply with Rule 52(a), it would have been compelled to find that there were no facts to state which would have supported its ultimate conclusion that there was "substantial evidence" to support the conclusion of the Trial Committee that a ground for trusteeship existed. However, the Fifth Circuit erroneously failed to reverse the District Court, based upon the evidence before it, or, in the alternative, to remand the case back to the District Court for compliance with Rule 52(a), but merely adopted the District Court's error and disposed of the case in a perfunctory manner in a brief opinion.

Petitioners still have not

received answers to the important factual questions presented to the District Court and the Fifth Circuit, such as:

What, then, did the District Court find in the record that prompted it to uphold the validity of the trusteeship?

What and/or where is the "substantial evidence" referred to by the Court on page 5 of its opinion and for what valid reasons under the LMRDA was the trusteeship imposed by the ILA and upheld by the courts below?

Is the trusteeship valid because Bailey took emergency action at the direction of the membership to protect the integrity of the Local when Young refused to co-sign checks?

Is the trusteeship valid because Bailey denied Young free access to Local funds for which Young had not issued his receipt in accordance with the constitution and customs of the Local?

Is the trusteeship valid because Bailey permitted members of the Local to vote on a legitimate motion from the floor reducing the initiation fee from its illegal figure of $500 to its legal figure of $200?

If so, which of these acts by Bailey constituted financial malpractice or undemocratic procedures, and how did the Local under Bailey fail to function properly as a collective bargaining agent or fail to carry out the legitimate objects and purposes of the ILA?

Petitioners, as well as all other rank and file labor union members across the country, are entitled to have these vital factual questions answered by the federal courts, and since the district court and the court of appeals in the instant case have failed to answer them, it is incumbent upon Your Honors to grant a writ of certiorari in this case so that these important factual issues can be answered.

III. Certiorari should be granted herein under the Supreme Court's power of supervision so that Your Honor's can correct the Fifth Circuit's sanctioning of a departure by the District Court from the accepted and usual course of judicial proceedings in holding that the International unions across the country are free to impose trusteeships over their constituent locals at will, provided a hearing is held, regardless of whether it is full or fair and regardless of the nature of the evidence, or lack

> of evidence, adduced at the hearing, thus holding that it is the procedure which controls rather than the substance, thus denying to the rank and file members their fundamental and constitutional rights to due process of law.

More important than the right of your petitioners herein to know the facts which supposedly support the lower Courts' ultimate conclusion that trusteeship was proper in this case is the right of rank and file labor union members across the country and the officials of the big and powerful international labor organizations operating in this country to know the facts upon which this case was decided so that they may know their rights and the limitations thereon under Title III of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S. C. Sec. 461, et seq., dealing with trusteeships.

The decision of the Fifth Circuit has the effect of telling international labor organizations across the country that the Act, particularly Section 302 of Title III thereof, 29 U.S.C. Sec. 462, is not binding upon them and that, so long as the international goes through the procedure of holding a so-called hearing, whether it be full or fair and whether it produces

evidence of one of the lawful causes for which trusteeships may be established, the trusteeship must be allowed by the federal courts to stand because the District Courts do not have the power to review the evidence but must bow to the superior power and authority of the international labor officials who imposed the trusteeship, notwithstanding the infringement upon the constitutional rights of the rank and file members by taking from them the safeguards which Congress in the Act granted to them.

The Fifth Circuit's decision puts form over substance. It tells union officials that it is the procedure that counts, and not the substance. It writes out of the law books the provisions of Section 302 of Title III of the Act which enumerate the lawful purposes for which trusteeships may be imposed and gives international unions freedom to impose trusteeship as a front to cover up the real motive of ousting duly elected local officers and replacing them with hand-picked "trustees","administrators", "assistant administrators" and "Coordinators of Education and Coordination." Unless Your Honors of the Supreme Court grant certiorari in this case, and reverse the decision of the Fifth Circuit, there will continue to exist a serious and far reaching conflict between the Fifth, Second and Tenth Circuits; there will continue to exist unlimited freedom on the part of international unions to arbitrarily and capriciously impose trusteeships at will; there will continue to be denials to

the rank and file members of their constitutionally and statutorily granted rights to intra-union democracy and rule by the ballot box and the law rather than by the whim of the international union officials. And, in the instant case, there will continue to be corruption and dissent in Local 1830 of the ILA. These are the precise ills for which Congress prescribed the LMRDA of 1959, and if the decision of the Fifth Circuit is allowed to stand, one of the purposes of Congress in enacting the LMRDA will be defeated by the courts in the Fifth Circuit and allowed to stand by the courts in the Second and Tenth Circuits, on the thin reasoning that the District Courts are without power to review the evidence upon which the trusteeship was purportedly imposed.

Your petitioners submit that it is the duty of the District Court to examine the evidence of union trial committee hearings under Rule 52(a) of the Federal Rules of Civil Procedure and to state the facts upon which its conclusion is based and the requirement of Section 304(c) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sec. 464(c), that a "fair hearing" be held prior to the imposition of trusteeship. Petitioners submit that unless the District Court, upon judicial review of the transcript of the Trial Committee hearing, examines into the evidence adduced there at, and the general tenor and demeanor of the hearing, the District Court cannot properly adjudge whether the hearing was a

"fair hearing", as required by Congress, or not. Under the rule as stated by the Fifth Circuit, the unions possess power superior to the District Courts, in that the District Court, even if it were to examine the evidence and determine that the hearing was not a "fair hearing" or that there was not substantial evidence of a lawful ground for trusteeship, the District Court would not have the power to substitute its judgment for that of the Trial Committee. Therefore, the unions doing business within the Fifth Circuit now have been given full authority to conduct a sham hearing, as the hearing in this case was, and regardless of the nature of the hearing or the evidence, place a local in trusteeship and be immune from the judicial scrutiny of the Federal Courts. Unions in the Second and Tenth Circuits are governed by a different and more rigorous standard which gives protection to the rights of the rank and file members, such as petitioners herein. Your Honors of the Supreme Court have not yet taken a trusteeship case, and petitioners submit that the time is now ripe for Your Honors to grant certiorari in this case and settle the important national issues raised by the parties herein once and for all in the public interest.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the

judgment of the United States Court of Appeals for the Fifth Circuit in this case.

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APPENDIX "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1970

No. 30746

D. C. Docket No. CA 69-109

ALTON J. BAILEY, ET AL,

Plaintiffs-Appellants

versus

GEORGE DIXON, ET AL,

Defendants-Appellees

Appeal from the United States District Court for the Eastern District of Louisiana

Before O'SULLIVAN, *THORNBERRY and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby,

affirmed;

It is further ordered that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

November 18, 1971

Issued as Mandate:

_____

Senior Circuit Judge, Sixth Circuit,
sitting by designation

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 30746

ALTON J. BAILEY, ET AL,
Plaintiffs-Appellants,

versus

GEORGE DIXON, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(November 18, 1971)

Before O'SULLIVAN,* THORNBERRY and DYER, Circuit Judges.

PER CURIAM: Appellants, Local Union 1830, its President, Alton J. Bailey, and Leroy Smith, its Vice-president, appeal from denial of their motion for a preliminary injunction in the United States District Court for the Eastern District of Louisiana, and from denial of their motion for summary judgment whereby to set aside a trusteeship for appellant, Local Union

---

*Senior Circuit Judge, Sixth Circuit, sitting by designation.

1830, by the International Longshoremen's Associatio
The District Judge also dismissed appellants' com
plaint. The action was commenced pursuant to Sectio
464 of the Labor Management and Disclosure Act, see
ing the dissolution of the trusteeship placed on the loca
by the international. The imposition of the trusteesh
by the International Longshoremen's Associatio
(ILA) precipitated the removal of Bailey and Smi
from their positions as union officers, as well as th
vesting of control of the local in the hands of the inte
national. The action taken by the ILA which ordere
the local to be placed in trusteeship, occurred afte
charges of alleged misconduct on the part of Baile
were filed by members of the local. In accordance wi
the constitution and bylaws of the union, a full hearin
was afforded Bailey and the Trial Committee foun
that there was substantial evidence to support charge
against him and that the imposition of the trusteesh
over the local was proper and in good faith.

Under 29 U.S.C. § 464(c), establishment of the tru
teeship carried with it a presumption of its validi
for a period of 18 months. To rebut this presumptio
it had to be shown by clear and convincing evidenc
that the imposition of the trusteeship was not in goo
faith or that the purpose is not allowable unde
29 U.S.C. § 462. At trial in the District Court appellan
renewed their attacks on members of the local as we
as the officers of the international as acting in conce
to invalidly maintain control of the local in hands
a former president who had been defeated by Baile
The District Judge found the dispute to be primari
between "two incompatible factions within the union

Bailey v. Dixon, 314 F. Supp. 452, 453 (E.D. La. 1970). It was also the finding of the trial court that,

> "[A] hearing has been held before a Trial Committee as required by the constitution of the International Longshoremen's Association. That Committee did hold a lengthy hearing and did make its report to the Executive Committee as required by the union's constitution. The report of the Trial Committee to the Executive Committee was to the effect that a trusteeship should be imposed upon Local 1830 for reasons which, in their opinion, were included under the provisions of Title 29 U.S.C.A. § 462. While this Court might not agree with all of the conclusions reached by the Trial Committee, and while it may or may not have reached the same conclusions as did the Executive Committee, nevertheless, a review of the lengthy transcript of the hearings held by the Trial Committee indicate to this Court that the trusteeship imposed by the International Longshoremen's Association was imposed in good faith and in accordance with the requirements of the constitution of the International Longshoremen's Association and the Labor-Management Reporting and Disclosure Act, and therefore presumed to be a valid trusteeship for a period of eighteen months." 314 F. Supp. at 453.

Commenting on the evidence and the result reached by the Trial Committee, the District Judge said:

> "It is not the function of this Court to substitute its judgment for that of the Trial Committee. As long as there is substantial evidence upon which to base the judgment of the Trial Committee, this Court does not have the right to set their finding aside. This Court does find, as a fact, that there is substantial testimony upon which to base the Trial Committee's conclusion * * *." 314 F. Supp. at 454.

We have reviewed the record and find that the Trial Committee's result is supported by substantial evidence and that the District Judge acted correctly when he ordered that,

> "[T]he motions of the plaintiffs for a preliminary and/or permanent injunction and for summary judgment will be denied, and this suit will be dismissed on the merits." 314 F. Supp. at 454.

We are provided with precedential support by this Court's opinion in *Atlanta Fed. & City Serv. Emp. L. U. 554 v. Service Emp. I. U.*, 441 F.2d 1115 (5th Cir. 1971).

Judgment affirmed.

APPENDIX "C"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 30746

ALTON J. BAILEY, ET AL
Plaintiffs-Appellants

versus

GEORGE DIXON, ET AL
Defendants-Appellees

PETITION FOR REHEARING

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Alton J. Bailey, Leroy Smith, Alvin Montgomer, Charles Lamark, Ernest Davis, Freddie Borris, H. E. Johnston, and Earl McQuillion, all officers of the General Longshoreworkers International Longshoremen's Association, Local Union 1830, Port Allen, Louisiana, plaintiffs-appellants above named, present this, their petition for a rehearing in the above entitled cause, and, in support thereof, respectfully show:

1

The court, in its opinion affirming the decision of the trial court, has committed manifest and reversible error of

law in sustaining the trusteeship imposed upon Local Union 1830 of the International Longshoremen's Association without finding facts and naming same to be established by the evidence to support a lawful trusteeship under the LMRDA, 20 USCA 462.

2

The court has committed manifest and reversible error of law in holding that the record of this case, including the 546-page Trial Committee Hearing Transcript, contains "substantial evidence" for the imposition of trusteeship under the LMRDA, 29 USCA 462, and that the trial court, and this court, are powerless to reverse the conclusion reached by the Trial Committee of appellee Union which erroneously concluded that there was substantial evidence to support a legal imposition of trusteeship.

3

The court erred as a matter of law in failing to follow the settled jurisprudence which holds that implicit in the requirement that a full and fair hearing be held before the imposition of trusteeship under the LMRDA is the requirement that there be some evidence to support the charges made. Vars v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, 320 F. 2d 576 at 578.

4

The court erred as a matter of law in affirming the trial court's erroneous holding that the federal courts are not at liberty to review the facts upon which a

labor union trusteeship is imposed and substitute the court's judgment for that of the trial committee, but rather are bound by the decisions of the International Union's trial committee. Shonfeld v. Raftery, 381 F2d 446; Vars v. International Bro. of Boilermakers, etc., supra

5

The court committed manifest error of law in holding that appellants had not proved by clear and convincing proof that the trusteeship was imposed by appellees in bad faith and not for one of the legal grounds under the LMRDA, 29 USCA 462; Schonfeld v. Raftery, 271 F. Supp. 128, affirmed, 381 F.2d 446.

6

The court committed manifest error of law in failing to reverse the trial court on the ground that the trial court erred in holding that the enumeration of grounds for trusteeships in 29 USCA 462 is not exclusive and that trusteeships may also be imposed for political reasons and for the purpose of "* * * consolidating the power of corrupt union officers * * * and preventing the growth of competing political elements within the organization," purposes which Congress intended that trusteeships not be used. 2 U.S. Code Cong. & Adm. News. 86th Cong. 1st Sess. 1959, p. 2333; United Brotherhood of Carpenters and Joiners of America v. Brown, 343 F.2d 872.

7

The case of Atlanta Federal and City Service Employees Local Union 554 v. Service Employees International Union, 441 F.2d 1115 (Fifth Circuit, 1971) which the court regarded as a conclusive and supported its opinion herein, is clearly distinguishable from the instant case because in the instant case, there are no facts in the record to justify the imposition of a legal trusteeship under the LMRDA, 29 USCA 462.

8

The trusteeship was not imposed after a fair hearing as required by the LMRDA, 29 USCA 464 (c).

9

The opinion of this court affirming the decision of the trial court which sustained the validity of the trusteeship in this case was not supported by facts on which the defendants could legally impose a trusteeship on the plaintiff local.

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this petition for rehearing be granted and that the judgment of this court be reversed and that the judgment of the district court be reversed, annulled, and set aside, and that upon further consideration, the plaintiffs be granted the relief that

they prayed for in their original petition and in their original brief filed before this court.

BY ATTORNEYS:

/s/ Joseph A. Gladney
JOSEPH A. GLADNEY
Suite 114, Attorneys' Bldg.
300 Louisiana Avenue
Baton Rouge, Louisiana 70802

/s/ Johnnie A. Jones
JOHNNIE A. JONES
The JoAnSead Building
1261 Government Street
Baton Rouge, Louisiana

CERTIFICATE

I, Joseph A. Gladney, attorney for petitioners, do hereby certify that the foregoing Petition for Rehearing of this cause is presented in good faith and not for purposes of delay.

/s/ Joseph A. Gladney
JOSEPH A. GLADNEY

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Rehearing has been served upon the defendants-appellees by mailing a copy of same to their counsel of record, the Hon. Julius Miller of the law firm of Gleason & Miller, 1450 Broadway, New York, New York, and Hon. Joseph W. Cole, Jr., of the firm of Cole & Claiborne, 710 Louisiana Avenue,

Port Allen, Louisiana, and to Clarence G. Kirby and Louis Harden at Local 1830, ILA, 395 Court Street, Port Allen, Louisiana.

Baton Rouge, Louisiana, this 29th day of November, 1971.

/s/ Joseph A. Gladney

JOSEPH A. GLADNEY

APPENDIX "D"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30746

ALTON J. BAILEY, ET AL,
Plaintiffs-Appellants

versus

GEORGE DIXON, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(December 20, 1971)

ON PETITION FOR REHEARING

Before O'SULLIVAN, * THORNBERRY and DYER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

---

* Senior Circuit Judge, Sixth Circuit, sitting by designation.

APPENDIX "E"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

ALTON J. BAILEY; LEROY SMITH; and THE GENERAL LONGSHORE WORKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL UNION NO. 1830, PORT ALLEN, LOUISIANA

VERSUS

CIVIL ACTION NO. 69-109

GEORGE DIXON; THOMAS W. GLEASON; RALPH MASSEY; MARK L. YOUNG and THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

* * * *

Joseph A. Gladney, Esq.
Suite 114, 300 La. Ave.
Baton Rouge, Louisiana 70802

Johnnie A. Jones
1263 Government Street
Baton Rouge, Louisiana

Attorneys for Plaintiffs

Julius Miller, Esq.
1450 Broadway
New York, New York 10018

Attorney for Internation
Longshoremen's Associati

Joseph W. Cole, Jr.
710 Louisiana Avenue
Port Allen, Louisiana

Attorney for defendant
Dixon, Gleason, Massey
& Young

WEST, Chief Judge:

This case involves a long-standing dispute between two warring factions of the General Longshore Workers International Longshoremen's Association, Local Union No. 1830, of Port Allen, Louisiana. One faction is apparently led by one Harvey Netter who had served as president of the local from its inception in 1955 until he was defeated for that office by plaintiff, Alton J. Bailey, in February of 1969. Since that election this matter has been before this Court on several occasions while each side to the dispute accused the other of misdeeds and wrongdoings. As a result of one hearing before this Court, it was ordered that an election of officers previously held be set aside and a new election held in strict accordance with the constitution and bylaws of the union. This was done. As a result of a later hearing, this Court issued a preliminary injunction enjoining the International, its officers, employees and others acting in concert with them, from in any way interfering with the duly elected officers in the performance of their duties. After that, a complaint was filed by certain members of the union seeking to place the local in trusteeship, under the provisions of 18 USCA Sec. 461, et seq. Certain charges of malfeasance in office were made against Alton J. Bailey, president, as a basis for the request that a trusteeship be imposed upon Local 1830. This trusteeship was opposed by the plaintiffs on various grounds, including failure to give proper notice to the plaintiffs of the charges

preferred by those seeking the trusteeship and failure of the International to hold a fair hearing prior to the imposition of the trusteeship on the local union. This matter was heard by this Court and as a result of this hearing, the Court ordered strict compliance with the provision of the Labor-management Reporting and Disclosure Act, 18 USCA, Sec, 461, et seq., and the provisions of the constitution and by-laws of both the International and local unions. The Court ordered that a fair hearing be held by the Executive Council of the International Union or by a committee to be established by the Executive Council before a trusteeship could be imposed on the local union. Pursuant to this order, a hearing was held by that committee appointed by the Executive Counc at which over five hundred pages of testimony was taken. Following the hearing, the Trial Committee rendered its report to the Executive Council of the International, as provided for by the constitution of the International Longshoremen's Association, and at a meeting of the Executive Council held on October 1, 1969, by unanimous vote, Local 1830 was placed in trusteeship. It has been operating under this trusteeship since that time.

And since that time, plaintiffs have persisted in their efforts to have this trusteeship set aside and the management of the union returned to the plaintiff, Alton J. Bailey, and the others whom plaintiffs claim are the duly electe officers of Local 1830.

The latest round in this battle is concerned with a motion filed in this Court by plaintiffs seeking a preliminary injunction enjoining the trustees from operating Local 1830 and a motion for summary judgment in favor of the plaintiffs, returning the operation and control of the local union to the plaintiffs. These motions were heard by this Court on December 17, 1969, and since that time both sides have filed proposed findings of fact and conclusions of law together with lengthy briefs in support of their respective positions.

After due consideration of all of the testimony taken by the Trial Committee in connection with the trusteeship imposed on Local 1830, and after considering the briefs of both counsel, and the testimony adduced at the hearing held before this court, it is concluded that plaintiffs' motion for summary judgment and for the issuance of a preliminary and/or permanent injunction must be denied.

There is no doubt but that the troubles in which this local union finds itself embroiled result from the unfortunate fact that there are two incompatible factions within the union. But be that as it may, a complaint was duly filed in accordance with the provisions of the Labor-Management Reporting and Disclosure Act, 29 USCA Sec. 464, and a hearing has been held before a Trial Committee as required by the constitution of the International Longshoremen's Association. That Committee did hold a lengthy hearing and

did make its report to the Executive Committee as required by the union's constitution. The report of the Trial Committee to the Executive Committee was to the effect that a trusteeship should be imposed upon Local 1830 for reasons which, in their opinion, were included under the provisions of Title 29 USCA Sec. 462. While this Court might not agree with all of the conclusions reached by the Trial Committee, and while it may or may not have reached the same conclusions as did the Executive Committee, nevertheless, a review of the lengthy transcript of the hearings held by the Trial Committee indicate to this Court that the trusteeship imposed by the International Longshoremen's Association was imposed in good faith and in accordance with the requirements of the constitution of the International Longshoremen's Association and the Labor-Management Reporting and Disclosure Act, and therefore presumed to be a valid trusteeship for a period of eighteen months. 29 USCA Sec. 464(c). The plaintiffs have failed, in the opinion of this court, to meet the burden of demonstrating by pure and convincing proof that the trusteeship was not established in good faith, and therefore it must be presumed to be a valid trusteeship for a period of eighteen months. It is not the function of this Court to substitute its judgment for that of the Trial Committee. As long as there is substantial evidence upon which to base the judgment of the Trial Committee, this court does not have the right to set their finding aside. This court does find, as a fact, that there is substantial

testimony upon which to base the Trial Committee's conclusion that a trusteeship should be imposed upon Local 1830, and for this reason, the trusteeship should not be disturbed by this Court for a period of eighteen months following its inception.

It is, of course, the opinion of this Court, that the operation of Local 1830 should be returned to duly elected officers at the earliest possible time, and simply because the law presumes a trusteeship to be valid for a period of eighteen months does not necessarily mean that it is always necessary to continue the trusteeship for that period of time. There have been evidences in this case that both sides might agree to and would actually prefer to hold a new election of officers under the supervision of the Secretary of Labor or his designee. It is the opinion of this Court that such a course would be most beneficial to both the International Association and to Local 1830 and such a procedure is highly recommended. But since this court has concluded, after a thorough review of the record, that the decision and recommendation of the Trial Committee and the Executive Council were not without substantial evidence in support thereof, the trusteeship under which Local 1830 is presently operating is a valid trusteeship and thus the motions of the plaintiffs for a preliminary injunction and for summary judgment will be denied, and this suit will be dismissed on the merits. Judgment will be rendered accordingly.

Baton Rouge, Louisiana, this 30th day of June, 1970.

/s/ E. Gordon West
UNITED STATES DISTRICT JUDGE

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 405-400 ROYAL ST.
NEW ORLEANS, LA. 70130

January 5, 1972

Mr. Joseph A. Gladney
Attorney at Law
Suite 114, Attorneys' Bldg.
300 Louisiana Avenue
Baton Rouge, Louisiana 70802

No. 30746 - Alton J. Bailey, et al vs. George Dixon, et al.

MANDATE STAYED TO: February 4, 1972

Dear Sir:

The court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore will not be routinely prepared by this office (38LW 3502).

Enclosed is a copy of the opinion, judgment and order denying rehearing which are still required by the Supreme Court to be incorporated as an appendix to your petition.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Clyde Hise Staiger
Deputy Clerk

enc.
cc: Mr. Johnnie A. Jones
Mr. Julius Miller
Mr. Joseph W. Cole, Jr.
Mr. Clarence G. Kirby
Mr. Louis Harden

APPENDIX "G"
80

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130
TEL. NO. 527-6514

February 10, 1972

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: No. 30746 - Alton J. Bailey, et al vs. George Dixon, et al.

Gentlemen:

The following action has this day been taken in the above case:

( ) Motion to consolidate granted.

( ) Motion to supplement or correct record granted.

( ) Motion for leave to file supplemental brief granted.

(XX) A further stay of mandate has been granted to and including March 11, 1972.

( ) The Court's opinion-order on petition for rehearing and petition for rehearing en banc has this day been rendered and a copy thereof is enclosed.

( ) Joint Motion as to time for filing briefs granted.

( ) Order enclosed has been entered.

( )

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Clerk
Deputy Clerk

/cms
cc: Mr. Joseph A. Gladney
Mr. Johnnie A. Jones
Mr. Julius Miller
Mr. Joseph W. Cole, Jr.
Mr. Clarence G. Kirby
Mr. Louis Harden

3-11 pm

APPENDIX "H"

Appendix "H" is the transcript of the Trial Committee Hearing conducted by the International Longshoremen's Association at Baton Rouge, Louisiana on August 12, 1969, which transcript is contained in the certified copy of the record filed herein and which is made a part hereof by reference.

APPENDIX "I"

The following are the pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959:

"Sec. 101(a)(5). Safeguards against Improper Disciplinary Action.--No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing. 29 U.S.C. sec. 411(a)(5)

"Sec. 302--Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate

objects of such labor organization. 29 U.S.C., sec. 462

"Sec. 304(c). In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under Section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the

cause on such conditions and for such period as it deems appropriate." 29 U.S.C. 464(c).

CERTIFICATE OF SERVICE

I certify that I have this day mailed a copy of the foregoing petition for Writ of Certiorari, together with the appendices to the following named persons:

Julius Miller
GLEASON & MILLER
1450 Broadway
New York, New York 10018

Joseph W. Cole, Jr.
COLE & CLAIBORNE
710 Louisiana Avenue
Port Allen, Louisiana

Clarence G. Kirby
Local 1830, ILA
395 Court Street
Port Allen, Louisiana

Louis Harden
Local 1830, ILA
395 Court Street
Port Allen, Louisiana

Baton Rouge, Louisiana, this 11th day of March, 1972.

Joseph A. Gladney

JOSEPH A. GLADNEY

Appendix: J

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130

March 8, 1972

Mr. Joseph A. Gladney
Attorney at Law
Suite 114, Attorneys' Bldg.
300 Louisiana Avenue
Baton Rouge, La. 70802

Re: No. 30746 - Alton J. Bailey, et al. vs. George Dixon, et al.

(1) Motion For Additional Stay of Mandate

(2) *March 15, 1972

Dear Sir:

I am authorized by this Court to advise that the above (1) has been received and filed, and under the rules and practice of this Court will be presented for ruling without oral argument on the date* shown in column (2) above, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Claudette Staiger
Deputy Clerk

cc: Mr. Johnnie A. Jones
Mr. Julius Miller
Mr. Joseph W. Cole, Jr.
Mr. Clarence G. Kirby
Mr. Louis Harden